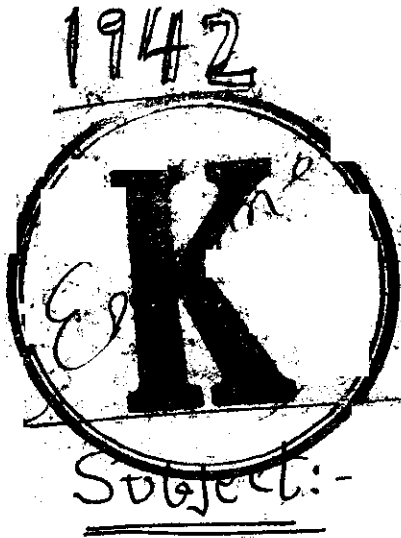




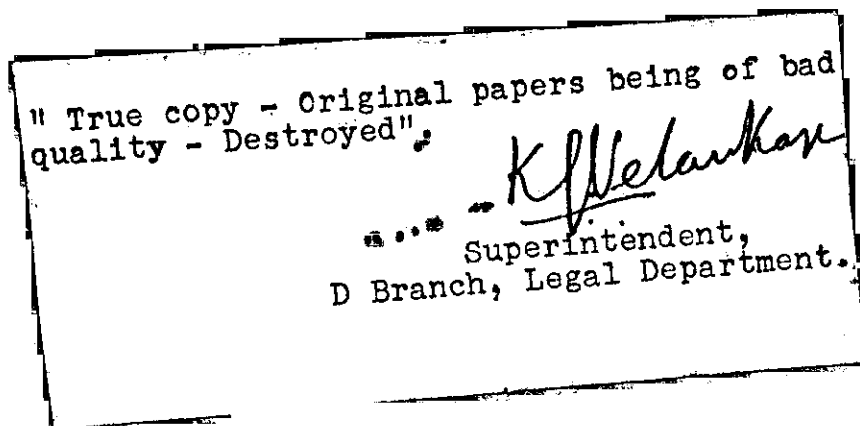
File No. Cr. A Dwr/42

Legal DEPARTMENT

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1942

Criminal Appeals in the High-Court
Bombay against the order of Acquittals
Dharwar District.



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Judgment recorded by the High Court in Criminal Appeal No. 292 of 1942 (By the Government of the Province of Bombay) in the case of Imperator Vs. R.L.Amte, Managing Agent, Hubli Electricity Co. Ltd.

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Advocate General with the Government Pleader for the Government of the Province of Bombay.

Counsel Mr.G.N. Thakor with Mr. S.B. Jathar for the Accused.

Coram : Beaumont, C.J. & Sen, J.

24th November 1942.

Oral Judgment : (Per Beaumont, C.J.) -

This is an appeal by Government against an acquittal of the accused, who is the Managing Agent of the Hubli Electricity Co.Ltd., by the Resident Magistrate, First Class, Hubli, and I must say it seems to me a singularly idle Appeal.

The accused is charged with an offence under sec. 13 (1) of the Electricity Act, which requires, so far as material, that where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, not less than one month before commencing the execution of the works, the licensees shall serve upon the person responsible for the repair of the street a notice in writing describing the proposed works, together with a section and plan thereof. It is not disputed that the Hubli Electricity Co.Ltd., are licensees within the meaning of the Act and that the Hubli Municipality is the person responsible for repairs of streets.

In January 1941 a provisional contract was entered into between the Hubli Electricity Company and the - - - Administrator of the Hubli Municipal Borough, which - -

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provided for the electrification of the streets within the Municipal limits of Hubli. The contract was to be for 10 1/2 years, and the Company was to complete the lighting arrangement in the area already covered by their poles within 6 months from the date of contract, and the remaining area within a further period of 12 months. Then it was provided that in view of the parties' failure to agree to the rate to be charged per unit, it was agreed to put in a joint application referring the question of rate to Government to be settled by arbitration. Clause (7) of the agreement provided, "We agree to request the Electrical Engineer to Government to draw up the terms of the contract in conformity with the above terms". Clause (9) provided : "The Municipality agrees to submit the map showing the position of lamps within a period of one month from today." That map was duly supplied on the 13th of March. The Electrical Engineer to Government took up the arbitration, and in May 1941 fixed the rate to be charged under the agreement at four annas per unit, and also settled the draft contract, which in some respects, at any rate, appears to ^{go} be beyond the terms of the provisional contract, which the arbitrator, ^{that} it may be, had no power to do. After the Company refused to accept the award, and complained that the arbitrator had been guilty of misconduct. On the 2nd of August the Administrator of the Municipal Borough wrote to the Company requiring them to accept the award, and concluded his letter in these terms :

" All the terms of the contract were finally agreed upon by us before the Electrical -- Engineer on 25th April 1941. His award about the rate also was finally sent to us in the 2nd week of May 1941. I hereby require the

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Hubli Electricity Company, Limited, immediately to undertake to fulfil all the agreed terms as are embodied in the agreement of 17th January 1941, and in the draft agreement prepared by the Electrical Engineer and to supply for a period of 10 years from 25th April 1941 energy for the public lamps and lamps on the properties of the Borough Municipality at the rate awarded by the Electrical Engineer, in accordance with the terms and conditions of the contract agreed to by us, failing which I shall be at liberty to take such action as I may be advised to take."

Now, the Company read that sentence as requiring them forthwith to proceed with their work of installing the poles for the street lamp lighting, and I think they were justified in so reading the letter. It is contended by the appellant that what was really meant was that the Administrator required the Company immediately to undertake the fulfilment of the agreed terms, and to undertake to supply energy. But the letter is certainly open to the construction that the Company is required immediately to supply energy; and if so, it was obviously necessary that they should at once proceed with the work of constructing the lines, which they did, On the 4th of October the Chief Officer complained that their action involved a breach of the obligations under section 13(1), and required them to remove their poles fixed and desist from erecting further poles.

I do not agree with the view of the learned Magistrate that the works which the Company was doing did not fall within sec.13, because I think the Company as a licensee was exercising a power in relation to the execution of works which involved laying wires over or under the streets. But it is, in the first place, obvious that serving a notice on the Municipality would have been a mere

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technicality, because the work was being done in accordance with the plan supplied by the Municipality themselves, and they knew perfectly well what was the work which was being done, and as they were pressing the Company to get on ~~the~~ with the work at once, it was no use giving them notice that the Company was going to start the work. I think, therefore, if there was a breach of section 13, it was a technical breach which would necessitate the imposition of a merely nominal fine. That in my view, having regard to their letter of the 2nd of August, the Municipality must be taken to have waived service of the notice. Moreover, the case falls, I think within the proviso to sec.47. Sec.47 is the penal section: the maximum penalty for the breach of the provisions of the Act covered by that section being Rs.100/-. The proviso is to the effect that where a person has made default in complying with any of the provisions of sec.1 amongst other sections, he shall not be punishable if the Court is of opinion that the case was one of emergency, and that the offender complied with the provisions as far as was reasonable in the circumstances. I think in view of the urgent letter from the Administrator, which the Company was justified in treating as requiring the work to be done immediately, the Company were entitled to say: "Here is an emergency, and we must get on with the work at once." As I have said, if the Company had served a notice under section 13, it would have been an idle one, because the Municipality knew perfectly well what was being done.

From the correspondence it looks as if the real object of this prosecution was to force the Company to accept the award, which they were unwilling to do, and I must confess that it seems to me scandalous that there should have been the waste of public time and money which this case has involved. According to the record,

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this case/was before the Magistrate on 22 days, though, no doubt, it did not occupy the whole of each day, but it occupied a long time, and we have a printed record in this appeal extending to 133 pages. There is no question of any general interest as to the construction of the Act. The sole question is whether technically there has been a breach of Sec.13. If we thought there had been a breach of the section, we should have fined the Company one anna. But as we think there has been no breach of the section, we merely dismiss the appeal.

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(Per Sen, J.) :- I agree.

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By the Court,

Sd. M.G.Rao.

Deputy Registrar.

HVK